

Before the
Federal Communications Commission
Washington, D.C. 20554

COPY

In the Matter of:

Implementation of the Satellite Home Viewer
Improvement Act of 1999:

Application of Network Nonduplication,
Syndicated Exclusivity, and Sports Blackout
Rules to Satellite Retransmissions

)
)
)
) CS Docket No. 00-2
)
)
)
)
)

RECEIVED

FEB 07 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JOINT COMMENTS OF TV GUIDE, INC. AND AFFILIATES

Charles B. Ammann
TV Guide, Inc.

Michael K. McKee
UVTV, Inc.
Superstar/Netlink Group, LLC

7140 South Lewis Avenue
Tulsa, OK 74136
(918) 488-4000

February 7, 2000

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
A. TV Guide and Its Operations	3
B. Overview of the C-band Industry	4
II. CONGRESS DID NOT INTEND FOR THE EXCLUSIVITY RULES TO APPLY TO C-BAND SUBSCRIBERS EXISTING BEFORE OCTOBER 31, 1999	7
III. IT IS NOT TECHNICALLY OR ECONOMICALLY FEASIBLE TO APPLY THE RULES TO C-BAND SUBSCRIBERS.....	9
A. It Is Not Technically Feasible for the C-band Industry to Comply with the Program Exclusivity Rules	11
B. It Is Not Economically Feasible for the C-band Industry to Comply with the Program Exclusivity Rules	13
IV. THE PROGRAM EXCLUSIVITY RULES APPLIED TO LOCAL CABLE OPERATORS CANNOT BE APPLIED TO THE SATELLITE INDUSTRY.....	14
V. CONCLUSION.....	16

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
)	
Implementation of the Satellite Home Viewer)	CS Docket No. 00-2
Improvement Act of 1999:)	
Application of Network Nonduplication,)	
Syndicated Exclusivity, and Sports Blackout)	
Rules To Satellite Retransmissions)	

JOINT COMMENTS OF TV GUIDE, INC. AND AFFILIATES

TV Guide, Inc. ("TV Guide") and its affiliates UVTV, Inc. and Superstar/Netlink Group LLC, hereby submit these Comments in response to the Notice of Proposed Rule Making ("NPRM") released by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding on January 7, 2000 (FCC 00-4).

I. INTRODUCTION AND SUMMARY

In the NPRM, the Commission seeks comment on the adoption of program exclusivity rules that would govern the distribution of satellite program services to Direct-To-Home ("DTH") satellite subscribers. In particular, the Commission was directed by Congress to consider adopting network non-duplication, syndicated exclusivity ("syndex") and sports blackout rules for satellite delivered "nationally distributed superstations" and "network stations" for DTH distributors that are similar to those that apply to cable operators.¹ In 1991, in response to an inquiry requested by Congress, the Commission found that syndex rules could not be

¹ See Section 1008 of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"), Pub. L. No. 106-113, 113 Stat. 1501, Appendix 1 (1999), codified at 47 U.S.C. §§ 339(b)(1)(A) and (b)(1)(B). The program exclusivity rules that are applicable to cable operators are set forth in 47 C.F.R. §§ 76.67 (sports blackout), 76.92 – 97 (network non-duplication) and 76.151 – 163 (syndex).

applied to satellite delivered broadcast programming services in a technically or economically feasible manner.² At that time satellite delivered programming services were only available to C-band "large" dishes (hereinafter referred to as "C-band") that were distributed using General Instrument's Videocipher scrambling technology and authorized through General Instrument's Access Control Center ("ACC"). Since then, a new, smaller dish employing digital technology has been developed, called Direct Broadcast Satellite ("DBS") services. DBS delivers its programming services to DBS customers' smaller satellite dishes through proprietary authorization systems. Meanwhile, the C-band industry continues to provide its services using Videocipher technology and authorizations are still processed in much the same manner through the facilities of the ACC.

In these comments TV Guide and its affiliated companies will show that, at least for the C-band industry, technology has not changed since the time the Commission last examined and ruled upon the syndex issue and therefore the Commission should not impose any program exclusivity rules on the carriers and distributors of C-band programming services now. Indeed, in the Satellite Home Viewer Improvement Act ("SHVIA"), Congress intended for the C-band industry to be generally exempt from restrictive rules limiting the distribution of programming services to the C-band dishes. Moreover, given the C-band industry's small size and declining subscriber base, the better policy would be to allow C-band distributors to enjoy a blanket exemption from the program exclusivity rules in the same manner as afforded small cable systems in the cable rules.³ In addition, as a competitor to and alternative to Satellite Master Antenna Television ("SMATV") systems and Multichannel Multipoint Distribution ("MMDS")

² *In the Matter of Imposing Syndicated Exclusivity Requirements on Satellite Delivery of Television Broadcast Signals to Home Satellite Earth Station Receivers*, Report and Order, 6 FCC Rcd 725 (1991).

³ See, e.g., 47 C.F.R. §§ 76.67(f); 76.95(a); and 76.156(b).

systems in many areas, C-band distributors should enjoy the same blanket exemption enjoyed by SMATV and MMDS operators.⁴

A. TV Guide and Its Operations

TV Guide operates three primary business units: TV Guide Entertainment Group, TV Guide Magazine Group, and United Video Group. The United Video Group ("UVG"), through various subsidiaries and affiliate companies, is involved in the distribution of superstations and network stations, as well as the distribution of other television programming services to C-band subscribers. Specifically, UVTV (a UVG affiliate) markets and distributes superstations WGN-TV (Chicago), KTLA-TV (Los Angeles) and WPIX-TV (New York), to cable television systems and other multi-channel video programming distributors ("MVPDs"). In addition, Telluride, another UVG affiliate, distributes six Denver-based television channels, including one superstation, KWGN-TV, and four network television stations, to C-band subscribers and cable television systems. UVG also provides satellite programming services (composed of cable networks and broadcast signals) to more than one million C-band satellite dish owners through Superstar/Netlink Group, LLC.⁵ The implementation of any of the proposed exclusivity rules on satellite carriers would have a direct impact on TV Guide, UVG and its affiliates.

⁴ *In the Matter of Definition of a Cable Television System*, 5 FCC Rcd 7638 (1990); *In the Matter of Amendments of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, 4 FCC Rcd 2711 (1989). Total national subscriber counts for SMATV and MMDS operators are approximately the same as for C-band carriers, with SMATV subscriber numbers increasing and slightly exceeding C-band subscriber numbers. *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Sixth Annual Report, CS Docket No. 99-230, FCC 99-418, (January 14, 2000) ("Sixth Annual Report") at ¶¶ 15 and 84.

⁵ Although UVG and its affiliates serve more than one million C-band subscribers with various programming services, the total number of subscriptions to the superstations that would be subject to the network nonduplication and syndex rules is far less. For example, only 600,000 C-band subscribers receive KTLA-TV, approximately 430,000 C-band subscribers receive WPIX-TV, and less than 300,000 C-band subscribers receive KWGN-TV. In addition, less than 300,000 C-band subscribers receive one or more of the Denver 6 network signals distributed by Telluride.

B. Overview of the C-band Industry

As a result of the advent of scrambling of satellite uplinks in 1986, it was realized that home dish owners, who had been previously receiving C-band satellite transmissions "in the clear" and free of charge, would be interested in purchasing programming services. In March of 1987, UVTV's predecessor began providing superstation signals to the C-band market. Individuals with residential C-band descramblers could receive superstation signals directly from the satellite, and those superstations were essentially the only scrambled satellite programming that was available to dish owners at the time. As the industry grew to a peak of 2.4 million authorized subscribers in 1995, the available analog and digital programming services increased to more than 200, but the advent of DBS reversed C-band's growth trend such that now there are less than 1.65 million C-band subscribers.⁶ Indeed, within the last eighteen months nearly 350,000 C-band subscribers left the C-band market.⁷ Communication industry experts and publications predict that the C-band industry will continue to decline, and have gone so far as to call C-band "a dying business."⁸ Although there is support for the belief that the C-band market will decline to approximately 1.2 to 1.5 million subscribers and then level off,⁹ no one is predicting a resurgence of the C-band industry, and most satellite equipment manufacturers have

⁶ As of December 1999, there were 1,648,000 C-band subscribers. *DTH Counts*, SKYREPORT, February, 2000, at 3.

⁷ The Commission's Sixth Annual Report on Competition reported a decline in the C-band industry from 2,028,225 subscribers in June 1998 to 1,783,411 subscribers in June 1999. Sixth Annual Report at ¶ 84. As previously stated herein, the C-band industry has further declined and stood at 1,648,000 million subscribers nearly over a month ago.

⁸ Jim McConville, *C-band Faces Erosion; Drop in Service Seen Resulting from Rapid Increase in DBS Sales*, BROADCASTING AND CABLE, Aug. 19, 1996, at 64; Monica Hogan, *Hot June Nudges DBS Above 10M*, MULTICHANNEL NEWS, July 19, 1999, at 18; Bill Carey, *Sat-TV Execs Talk Convergence*, NEW TECHNOLOGY WEEK, September 21, 1998.

⁹ *Don't Count C-band Satellite TV Business Out Yet, Users Say*, SATELLITE TV WEEK, May 3, 1999.

either gone out of business or stopped manufacturing C-band equipment.¹⁰ C-band, however, will likely remain for some time as a niche business serving many rural subscribers who have no access to cable and are not willing or interested in abandoning their C-band equipment for the newer, high power, small dish services. Nonetheless, many C-band subscribers have already converted to DBS and it is expected that the decline in C-band will continue as consumers recognize it is more expensive to repair, replace or move their C-band dishes than it is to subscribe to one of the two the DBS systems which are offering many incentives to switch technologies, including free or nearly free equipment. This change and decline in C-band subscribership is at least one reason why Congress decided to exempt the C-band industry from the “unserved household” restrictions of Section 119 of the Copyright Act, and there is evidence that Congress intended to exempt C-band from all of the exclusivity requirements, as well.¹¹

C-band should be exempt from the exclusivity rules. Surely Congress did not intend to allow C-band subscribers to continue to receive C-band programming in one section of the SHVIA, only to take it away in another. Further, the exclusivity rules have always provided exemptions to small cable systems in order to alleviate them from the burden of purchasing expensive equipment necessary to carry out deletions. C-band should be considered the satellite equivalent to the small cable system. Just as the FCC used its authority to make the determination that the program exclusivity rules would not apply to cable systems with 1,000

¹⁰ Jim McConville, *C-band Faces Erosion; Drop in Service Seen Resulting from Rapid Increase in DBS Sales*, BROADCASTING AND CABLE, Aug. 19, 1996, at 64.

¹¹ The passage of SHVIA was in part due to efforts of the DBS operators to begin selling local network signals in local markets and compete more efficiently with cable operators. Previously only distant network signals were available to any dish owner and no network signal could be sold to dish owners who could receive network signals with a conventional rooftop off-air antenna. *In the Matter of Satellite Delivery of Network Signals to Unserved Household for Purposes of the Satellite Home Viewer Act*, 14 FCC Rcd 2654 (1991) at ¶ 2. SHVIA now permits satellite delivery of local signals into local markets. 17 U.S.C. § 122. Because it was apparent that local signals would not become available to C-band subscribers in any market, and to allow C-band subscribers to receive network programming, Congress exempted existing C-band subscribers from the restrictions on importing distant network signals into any household, even those that could receive local signals off-air. 17 U.S.C § 119(a)(2)(B)(iii).

subscribers or less, it should use that same authority and give the same consideration to C-band, as the C-band industry faces at least as many technical and economic hardships as the small cable operators. Because Congress wanted the satellite industry as a whole to be subject to the “same” rules as cable, the same exemptions should also apply.

Indeed, the technical and economic hurdles faced by the C-band industry would force satellite carriers to abandon the delivery of superstations and network stations to C-band subscribers, depriving the very C-band subscribers Congress sought to protect from receiving this programming and accelerating the decline of the industry as a whole. Many C-band subscribers have no over-the-air antennas or other alternative to receive the programming that would be eliminated from satellite delivery under the program exclusivity rules. Blacking out this programming would effectively restrict these consumers from receiving any of this programming. Moreover, it would be technically infeasible for satellite carriers to comply with network nonduplication, syndicated exclusivity, and sports blackout rules similar to those imposed on larger cable operators. Currently, neither satellite carriers nor their distributors have the technical ability to blackout programming to individual locations on a program by program basis. Further, even if the C-band industry levels off between 1.2 and 1.5 million subscribers, it is not economically feasible to invest the significant time and financial resources that would be required to develop new technologies which would be used to implement exclusivity rules to the C-band industry before the copyright license for delivering superstations and network stations expires in 2004, if such technology could be developed at all.¹²

Finally, program exclusivity rules are currently applied to local cable operators on a market-by-market basis and do not lend themselves to the satellite carriers or their distributors

¹² By contrast, the license for cable operators distributing superstations and network stations is permanent, 17 U.S.C. § 111, as is the “local-into-local” license for DBS carriers. 17 U.S.C. § 122.

who distribute the programming to subscribers on a nationwide basis, whether C-band or any other satellite technology. The cable rules reference "community units," "35 or 55 mile radius" and provide exemptions for "cable systems having fewer than 1,000 subscribers." In satellite, there is no equivalent to the community unit, it would be economically prohibitive to determine a 35 or 55-mile radius in each market, and there are no "systems" with fewer than 1,000 subscribers for which to easily calculate whether the exemption applies. In addition, two of C-band's other competitors exempt from the program exclusivity rules in their entirety; SMATVs, representing an approximate 1.8% share of the national MVPD subscribership as of June 1999 and MMDS operators, representing an approximate 1% share of the national MVPD subscribership as of June 1999, have no program exclusivity obligations.¹³ For all of these reasons, the cable rules should not apply to any satellite carrier.

II. CONGRESS DID NOT INTEND FOR THE EXCLUSIVITY RULES TO APPLY TO C-BAND SUBSCRIBERS EXISTING ON OR BEFORE OCTOBER 31, 1999

Section 1005(a)(2) of SHVIA created a new section 119(a)(2)(B)(iii) of the Copyright Act to permit continued delivery of network stations by means of C-band transmissions to C-band dish owners who received a network signal or signals before October 31, 1999, or who were recently required to have such service terminated pursuant to court orders or settlements under section 119. Although the legislative history behind this provision is vague, it can be assumed that one of the reasons for including this provision in the bill was Congress' understanding of the declining nature of the C-band industry. Evidence of this can be found in a colloquy between Senator Hatch and Senator Stevens shortly before the passage of SHVIA

¹³ Sixth Annual Report at ¶15. The total percentage of television households served by the C-band industry is less than 1.5%. When you calculate the total number of C-band homes that receive a superstation, that percentage drops even further to less than 1%, and is declining. Further, the number of SMATV subscribers has increased in 1999, reversing a decline exhibited in 1998.

whereby Senator Stevens states, “the C-band industry is declining and the conferees correctly exempted existing C-band subscribers from numerous provisions in this bill at my request.”¹⁴

In that same colloquy, Senator Hatch confirmed, at the request of Senator Stevens, that the Act was intended to exempt the C-band industry not only from the “unserved household” restriction, but from the exclusivity rules, as well.¹⁵ Moreover, Senator Hatch pledged to work with Senator Stevens to ensure that “*when the FCC promulgates these rules, the C-band industry is exempt and C-band consumers are protected.*”¹⁶ Congress could not have intended to provide C-band customers with network programming only to take it away again by requiring the FCC to implement program exclusivity rules. Indeed, the fact that Congress exempted the C-band industry from the “unserved household” definition demonstrates that the application of program exclusivity rules was not intended.

The “unserved household” limitation is similar to that of network non-duplication: it is designed to protect the local over-the-air broadcaster from losing viewers to imported distant signals. However, now that Congress has exempted the C-band industry from the unserved household restriction (for subscribers who received the services before October 31, 1999) any re-imposition of that restriction under the network nonduplication rules would defeat the purpose of the congressional exemption and possibly deprive C-band subscribers of their only access to network programming.¹⁷ Similarly, syndicated exclusivity was designed to protect the local broadcaster, but if the network programming protection is eliminated, it makes no sense to protect syndicated programming, either. These rules would create havoc for C-band subscribers

¹⁴ 145 CONG. REC. S14988 (daily ed. Nov. 19, 1999).

¹⁵ *Id.*

¹⁶ *Id.* (emphasis added).

who may have no other viable option for watching syndicated or network programming.

Application of any of the program exclusivity rules to C-band is unwarranted.

In addition to the legislation itself and the colloquy, there is another justification for a C-band exemption. Cable systems with fewer than 1,000 subscribers are automatically exempted from the program exclusivity rules because of the significant costs involved with deleting and replacing programming. Because it is not economically feasible for small cable systems to comply with the current cable rules, it would be equally true that, due to C-band's small market presence, it would not be economically feasible for C-band satellite carriers or distributors to comply with the rules or try to fashion new ones for satellite. In fact, less than 600,000 C-band households receive any one of the nationally distributed superstations that would be affected by the network nonduplication and syndex rules. As described in more detail below, the extreme technical difficulties that the C-band industry would face if it were forced to comply with program exclusivity rules would economically devastate the already declining industry. The exemption that was created for small cable systems, and extended to MMDS and SMATV, should also be extended to C-band satellite carriers.

III. IT IS NOT TECHNICALLY OR ECONOMICALLY FEASIBLE TO APPLY THE RULES TO C-BAND SUBSCRIBERS

In 1991 the Commission found that it would be technically and economically infeasible to implement syndicated exclusivity regulation for the distribution of satellite signals to C-band dish owners.¹⁸ The Commission found that it was technically infeasible because the satellite market was still small and mostly rural, the equipment that would be required to blackout

¹⁷ Another Congressional purpose that would be frustrated is that of encouraging the widest dissemination of freely broadcast television programming. *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 454 (1984).

¹⁸ *In the Matter of Imposing Syndicated Exclusivity Requirements on Satellite Delivery of Television Broadcast Signals to Home Satellite Earth Station Receivers*, Report and Order, 6 FCC Rcd 725 (1991) at ¶ 3.

programming was not readily available, and even if such equipment could be developed, it wouldn't be in time for the 1994 expiration date of the compulsory copyright license.¹⁹ In addition to the technical hurdles, the Commission also found that implementation of the syndicated exclusivity rules would be economically infeasible.²⁰ In addition, the limited zones of protection available in only a few markets that would not correspond to the syndicated program owners' territories made it impossible to apply the rules without changing contractual rights.

The issues with respect to applying any program exclusivity rules for the C-band industry have not changed since 1991, and if anything conditions have worsened. In 1991, C-band was a new technology, with a growing subscriber base. Now, as mentioned previously, C-band is now a declining industry, with subscribers leaving each month for alternative technologies such as cable and DBS. By the time the compulsory copyright license expires in 2004, some predict the C-band industry will no longer exist at all.²¹ While this may be an over-exaggeration, it is true that the total number of C-band subscribers will be significantly less than the 2.4 million in 1995 or even the current 1.65 million. Such decline does not afford the C-band industry the resources to develop, implement the technology needed to comply with the program exclusivity rules. Moreover, the small size of the industry further prohibits C-band from employing the resources that would be necessary to administer such program exclusivity rules.

Furthermore, the colloquy between Senator Stevens and Senator Hatch, referenced above, further bolsters the fact that Congress knew that it would be infeasible to implement these exclusivity rules in the C-band industry. Senator Stevens states, "It is my understanding the

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Don't Count C-band Satellite TV Business Out Yet, Users Say*, SATELLITE TV WEEK, May 3, 1999.

conferees sought to exempt the C-band industry from the program exclusivity rules that we are applying in the satellite bill. Complying with the program exclusivity rules would be technically and economically unreasonable for the C-band industry and would only deprive C-band consumers with some of their favorite programming.”²²

A. It Is Not Technically Feasible for the C-band Industry to Comply with the Program Exclusivity Rules.

The distribution of C-band programming is a complex process involving the cooperation of several different entities, including the satellite carrier, General Instrument’s Access Control Center (the “ACC”), and the program distributor. Each of these parties has separate pieces of information needed to deliver programming into the C-band customer’s home, but no one party alone has every piece of information. Specifically, the satellite carrier, such as UDTV, controls the uplink and provides the programming signal, which is distributed and received on a national basis. That national signal is then received by the ACC. The ACC maintains a database with all of the C-band “decoder” numbers, and when the proper party makes a request, the ACC has the ability to send an “authorization” to an *individual* decoder. The program distributor, through its direct relationship with the C-band customer, sends the request for authorization or deauthorization to the ACC, yet the program distributor never physically “touches” the programming signal. This complex process is in direct contrast to the local cable system operator who receives the programming at its own head-end, and has the ability to turn off, and then back on, multiple subscribers in a limited geographic area at the flip of a switch.

The program exclusivity rules currently applied to cable operators require certain network programming to be blacked out to cable subscribers within a 35 (or sometimes 55) mile radius upon proper notice by a television broadcast station with exclusive rights to programming

²² 145 CONG. REC. S14988 (Nov. 19, 1999).

and certain sports events. In order for C-band to comply with these rules, it would first require deauthorizing programming to individuals within a specific geographic location, a capability C-band currently does not have.

One possibility that has been explored by the C-band industry in response to these comments would be for the program distributor to use "geocoding," similar to that currently used to determine "unserved households" under Section 119 of the Copyright Act. In addition to the great economic burden associated with this approach, discussed below, the technological hurdles make this possibility infeasible. To geocode each address would require a representative to manually input each decoder number or unit address for each subscriber within a specified geographic area (determined first by zip codes), and then manually send deauthorizations to for each individual subscriber to the ACC. The ACC would then have to send individual deauthorization signals to each subscriber's decoder equipment. Depending on the number of subscribers required to be deauthorized, this process would have to begin well in advance of the actual start time of the programming to be aired, causing subscribers to lose programming that they are eligible to receive preceding the required blackout. This process would then have to be reversed within a short time frame (anywhere from one-half hour to 3 hours, depending on the specific program), causing C-band customers additional programming loss. The program exclusivity rules would then require this process to be repeated many times each day in each effected market. Such a process would put a tremendous strain on the ACC's system, and again would not guarantee that programming would be deleted, as subscribers would have to actually be tuned in to a television channel using the videocipher encryption technology. This approach is not acceptable.

Another possibility is a completely separate approach, whereby the Satellite Carrier would determine the affected zip codes in a particular geographic area, and then, using a

program provided by the ACC called "Geoloc," would block receipt of the signal to the affected zip codes.²³ However, this program only works in conjunction with zip codes, it is not frequently updated, and it is not particularly accurate.²⁴ Utilization of this program would unnecessarily cause programming to be deleted from subscribers who are actually eligible to receive the programming, and does not guarantee that subscribers ineligible to receive the programming are not actually receiving it. Further, there is no way to provide replacement programming to the subscribers, as this is a national signal and substituting programming in one time zone would mean that all subscribers are preempted from receiving that network programming, providing a far greater time and location protection for the local broadcasters. This approach does not provide a viable solution for the C-band industry, and does not allow the C-band customers to receive the programming Congress intended to protect.

B. It Is Not Economically Feasible for the C-band Industry to Comply with the Program Exclusivity Rules.

In order to comply with the network nonduplication and syndicated exclusivity rules, satellite carriers, for each channel carried, would have the costly administrative burden of dealing with almost 1600 individual stations in over 200 markets concerning thousands of separate programs, and then applying this information on a subscriber by subscriber basis to initiate program deletion in those markets in which there is a conflict. This is in sharp contrast to cable systems, however, which are local entities that deal with only a few local broadcasters rather than 1,600 commercial and educational broadcasters nationwide, and that have the ability

²³ This program is not currently used by any of the superstation providers, and the implementation of such a system has not been fully evaluated. While the system is believed to be used by other programmers to blackout certain programming, it is used on a much smaller scale, and it is not known at this time how the volume of blackouts required by the program exclusivity rules would affect such a program.

²⁴ Even if a system was developed and implemented which used zip codes to determine zones of protection, it is inappropriate to draw an analogy between zip code areas and cable system service areas because zip code areas can include large geographical areas where there is little over-the-air reception, especially in sparsely populated areas.

to simply delete programming system-wide (as opposed to a subscriber-by-subscriber basis).

The costs associated with hiring personnel to track the programming contained on each individual station in each market, in addition to the personnel needed to either program the thousands of deletions on a nationwide basis, are not economically justified in any case, and are far too prohibitive to justify C-band's compliance with the rules.

In addition to the costs of administering any program exclusivity rules, there would be costs associated with developing technology capable to accurately implement any program exclusivity rules. These may include costs to the program distributor associated with developing, licensing and maintaining geocoding software capable of locating individual subscribers within a particular geographic region, and then working with the ACC and the satellite carrier to develop technology capable of deauthorizing and reauthorizing programming during short intervals in hundreds of markets many times a day. Even if this could all be done, it is improbable that any such process would be completed and fully implemented before the expiration of the compulsory copyright license in 2004. Moreover, any solution that would require the purchase or manufacture of additional C-band equipment to be used by C-band customers would further deplete the C-band subscriber base, making the economic feasibility even more tenuous. For all of the above reasons, the same exemption allowed small cable operators faced with the economic burdens of deleting programming in order to comply with the program exclusivity rules should be applied to the C-band industry as well.

IV. THE PROGRAM EXCLUSIVITY RULES APPLIED TO LOCAL CABLE OPERATORS CANNOT BE APPLIED TO THE SATELLITE INDUSTRY

Cable systems provide programming to cable subscribers on a local basis. While a cable company may exist on a nationwide basis, the actual systems are local in nature, and a cable office staffed with the personnel of the cable company can be found within each community

served. Cable systems have direct contact with all of their subscribers, control the programming through a head-end maintained by the cable system, and provide programming services to subscribers contained within a limited and well-defined geographic area. Satellite carriers and their program distributors, however, operate on a nationwide basis, with virtually no local presence in any community, and no single entity maintains direct control over every part of the process that enables C-band customers to receive programming services. Therefore, the exclusivity rules that are currently applied to local cable operators do not lend themselves to the satellite carriers or their distributors who distribute the programming to subscribers on a nationwide basis.

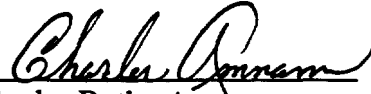
The cable rules reference "community units," "35 or 55 mile radius" and provide exemptions for "cable systems having fewer than 1,000 subscribers." In satellite, there is no equivalent to the community unit and, as discussed in detail above, it would be economically prohibitive to force a satellite carrier, or more likely a program distributor, to determine a 35 or 55-mile radius in each market. Indeed, given C-band's nationwide penetration of less than 1.5% of the total TV households, we can assume that the majority of C-band satellite subscribers reside in areas where the total subscriber count on a community unit basis is less than 1000. Further, the cable systems that are required to delete programming to subscribers are also allowed to replace programming. This is used to prevent subscribers from switching to another channel when faced with a blank television screen. However, in the satellite industry, this would not be possible. There is no way to substitute programming on a subscriber-by-subscriber basis or even a market-by-market basis. The only possible solution would be to substitute the protected programming on a nationwide basis, which is currently done for WGN, by far the most widely distributed superstation. This solution however, is not economically feasible for stations such as KTLA, WPIX, and KWGN, which have far fewer subscribers than WGN.

Besides the actual technical hurdles of complying with the rules on a local basis and the impossibility of providing replacement programming, satellite carriers would be faced with the immeasurable administrative task of monitoring every station in every market every day. The paperwork alone would be nearly impossible to control. This is in sharp contrast to the local cable operator who only monitors their own local market and the stations contained therein.

VI. CONCLUSION

While applying cable's program exclusivity rules to the DTH industry will be extremely burdensome and may even be technically infeasible and economically prohibitive, it will be especially devastating to the C-band industry. As shown in the comments above, there are many justifiable reasons for exempting C-band from these rules entirely, including the reason that Congress actually intended to do so when it enacted SHVIA. Further, any requirement of C-band to implement any program exclusivity rules will necessarily involve the development and implementation of new technology at great expense, which will undoubtedly result in the loss of superstation and network delivery over C-band technology. This will cause numerous consumers to lose programming services and will ultimately eliminate an alternative to cable and DBS—a result clearly not intended by Congress. Instead, satellite carriers and their C-band distributors delivering nationally distributed superstations and network stations to the C-band industry should be exempt from complying with any program exclusivity rules, just as the FCC has exempted SMATV, MMDS, and many small cable systems.

Respectfully submitted,



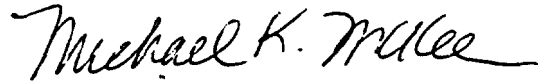
Charles Butler Ammann

TV Guide, Inc.

7140 South Lewis Avenue

Tulsa, OK 74136

(918) 488-4000



Michael K. McKee

UVTV, Inc.

Superstar/Netlink Group, LLC

7140 South Lewis Avenue

Tulsa, OK 74136

(918) 488-4000

February 7, 2000

CERTIFICATE OF SERVICE

I, Judith A. Easterday, hereby certify that a copy of the foregoing Comments were served by hand delivery this 7th day of February, 2000 on the following:

Office of Chairman William Kennard
Federal Communications Commission
445 12th Street, S.W. Room 8-B201
Washington, D.C. 20554

Office of Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W. Room 8-A302
Washington, D.C. 20554

Office of Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W. Room 8-B115
Washington, D.C. 20554

Office of Commissioner Michael Powell
Federal Communications Commission
445 12th Street, S.W. Room 8-A204
Washington, D.C. 20554

Office of Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W. Room 8-C302
Washington, D.C. 20554

William H. Johnson
Deputy Chief
Cable Services Bureau
445 12th Street, SW Room 3-C742
Washington, DC 20554

Eloise Gore
Cable Services Bureau
Federal Communications Commission
445 12th Street, SW Room 4-A802
Washington, D.C. 20554


Judith A. Easterday